

7459
DECISION



C. Hume 12-2
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-192585

DATE: August 29, 1978

MATTER OF: SMR Corporation

DIGEST:

Where small business concern is found to be nonresponsible by procuring activity, subsequent denial of Certificate of Competency by Small Business Administration is viewed as affirmation of nonresponsibility which is final and not for review by GAO.

SMR Corporation (SMR) protests the refusal of the Small Business Administration (SBA) to issue it a Certificate of Competency (COC) in connection with invitation for bids No. 51-78-061, issued by the United States Department of Housing and Urban Development (HUD).

SMR advises that HUD determined it was nonresponsible because of its default on a 1970 HUD contract and a dispute between it and HUD concerning its performance on a 1973 contract. SMR does not share HUD's views regarding its earlier performance.

The documents submitted by SMR indicate that SMR is a small business concern and that the matter was referred to SBA pursuant to 15 U.S.C. § 637(b)(7) (1970) as amended by Pub. L. 95-89, § 501, 91 Stat. 551, August 4, 1977, for processing under the COC procedure. SBA declined to issue a COC.

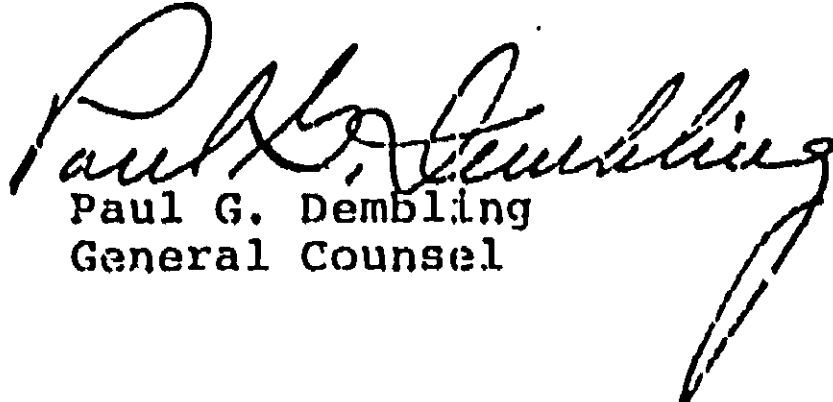
SBA's denial of a COC is essentially an affirmation of the procuring activity's determination of nonresponsibility. Our Office will not question a contracting officer's determination that a small business concern is nonresponsible where that determination has been affirmed by SBA's denial of a COC because, by law, disposition of

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the matter by SBA is final. Guideline Maintenance Company, B-188758, July 26, 1977, 77-2 CPD 51; North American Business Machines Corporation, B-190319, November 25, 1977, 77-2 CPD 409.

Moreover, while it is not entirely clear from SMR's submission, the procurement appears to be one involving management broker services. Since HUD has broad authority in this area, pursuant to 12 U.S.C. 1702 (1976), to make expenditures "without regard to any other provision of law governing the expenditure of public funds," we have held that we are without authority to take legal exception to the expenditure of public funds in connection with these management broker contracts. See Hanson Realty Co., B-186033, July 8, 1976, 76-2 CPD 23. Therefore, even if the SBA action were not final, it appears that this matter would not be for our consideration.

The protest is dismissed.


Paul G. Dembling
General Counsel